REMARKS

In the Official Action dated July 30, 2003, Claims 1, 3-11 and 13-22 and 24-33 are pending and under consideration. Claims 1, 3-11, 24-25 and 29 are allowed. Claims 13-22, 26-28 and 30-33 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 5,391,388 to Lewis et al. ("Lewis et al.").

This Response addresses each of the Examiner's rejections and objections. Favorable consideration of all pending claims is therefore respectfully requested.

In the first instance, Applicants, through the undersigned, wish to thank Examiner Lien Tran for the courtesy and assistance extended on behalf of Applicants in connection with the telephonic interview of August 20, 2003.

Claims 13-22, 26-28 and 30-33 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 5,391,388 to Lewis et al. ("Lewis et al."). Specifically, the Examiner alleges that based on the fact that Lewis et al. disclose that other related food products, such as a granola bar or a confectionery, can be prepared by the adherence of flakes, the rejected claims are therefore rendered obvious by Lewis, et al.

In respect to the pending rejection, during the course of the telephonic interview of August 20, 2003, Applicants particularly pointed out that Claims 13-22, 26-28 and 30-33 are directed to a process in which flakes can stick together by gelatinization, i.e., without additives, while a granola bar, for example, is made in a process in which individual flakes, such as flakes disclosed by Lewis et al., stick together with the help of honey or the like. Unlike the flakes claimed in the present application, the flakes disclosed by Lewis et al. cannot adhere to each other independently or as a result of gelatinization. During the telephonic interview, the Examiner acknowledged such difference between the flakes of the

present invention and the flakes of Lewis et al. However, the Examiner further alleged that it was not clear that the flakes as recited in pending Claims 13-22, 26-28 and 30-33 adhere without additive due to the process of gelatinization. During the interview, Applicants inquired of the Examiner as to whether the rejection can be overcome by adding the degree of gelatinization to the claims so as to distinguish the present invention from Lewis et al. In this regard, Applicants also observed that Claims 13-22, 26-28 and 30-33, as presently amended to include the step of gelatinization, conform to the allowed claims. The Examiner agreed that Applicants' proposed amendments conform to the allowed claims and agreed to favorably consider such amendments.

Accordingly, Applicants have amended Claims 26-28 to recite that the starch in the grain is substantially gelatinized. Support for the amendments can be found throughout the specification, and at page 7, line 4 to page 8, line 9, for example. No new matter is added.

Claims 26-28, as amended, recite a breakfast cereal biscuit ("BCB") comprising waxy grain in an amount of at least 20% by weight of total grain content wherein substantially all of the starch content in the waxy grain is gelatinized. Thus, Applicants respectfully submit that the claimed invention is distinguished from Lewis et al. Notably, Lewis et al. merely discloses that other breakfast cereal food related products, such as granola bars and confectionary, can be prepared, taking advantage of the invention of Lewis et al. *See* Lewis et al. col. 3, ¶ 2, for example.

Applicants further submit that the rejection of claimed subject matter under 35 U.S.C. §103 requires that the suggestion to carry out the claimed invention must be found in the prior art, not in Applicants' disclosure. In re Vaeck, 947 F.2d 488, 492, 20 U.S.P.Q.

1438, 1442 (Fed. Cir. 1991). Here, the suggestion to use the claimed methods to make the BCB product of the present invention appears nowhere in Lewis et al. Therefore, Applicants respectfully submit that the process of Claims 13-22, 26-28 and 30-33, as amended, for making BCB products is not obvious in light of Lewis et al.

Thus, Applicants submit that the rejection of Claims 13-22, 26-28 and 30-33 under 35 U.S.C. 103(a) is overcome. Withdrawal of the rejection is respectfully requested.

In view of the foregoing amendments and remarks, it is firmly believed that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

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